SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301648

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: STANLEY TWOMEY GRAY ET AL vs. DEFENDANT: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

On March 26, 2025, Defendants Osborn, and Redfern filed a motion to compel responses and for monetary sanctions against Plaintiffs. A notice of hearing was served on the opposing party and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

On May 14, 2025, Philip Diamond was appointed as Discovery Facilitator for the motion. Neither party filed Declaration of Non-Resolution as required in local rule MCR Civ 2.13H. The court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

In light of the missing Declaration of Non-Resolution, it is unclear whether the parties have resolved the motion. The court continues this motion to July 2, 2025 and orders that any Declaration of Non-Resolution be filed forthwith.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001659

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: JOHN DOE vs. RESPONDENT: MARINHEALTH MEDICAL CENTER	

NATURE OF PROCEEDINGS: 1) MOTION – SUMMARY JUDGMENT
2) MOTION – DISCOVERY – DISCOVERY FACILITATOR PROGRAM

RULING

Respondent Marinhealth Medical Center's motion for summary judgment is granted. In light of the court's ruling on the summary judgment, Petitioner's request to re-open discovery is denied.

Allegations in the Amended Petition

Petitioner filed his Amended Petition for Writ of Mandate against Marin General Hospital ("MGH"), now known as Marinhealth Medical Center, on November 1, 2024. Petitioner alleges that from December 9-11, 2015, he was a patient at MGH. (Amended Petition, ¶3.) In 2022, Petitioner filed a form with the California Department of Justice ("DOJ") to determine whether he was eligible to possess firearms. In 2023, Petitioner received a letter from the DOJ informing Petitioner he was ineligible to possess firearms or ammunition. (*Id.*, ¶4.) Petitioner was later sent a copy of his "Firearms Prohibition Summary", which states that MGH committed Petitioner under California Welfare and Institutions Code Section 5250 on December 9, 2023, making Petitioner prohibited from firearms possession for life. (*Id.*, ¶5.) Petitioner acquired his records from MGH which contained a form titled "California Department of Justice Bureau of Firearms Report of Firearm Prohibition Mental Health Confidential" dated December 9, 2023. (*Id.*, ¶6.) Petitioner asked MGH to withdraw the report it submitted to the DOJ but MGH refused. (*Id.*, ¶8.) Petitioner seeks a writ of mandate requiring MGH to "remove the erroneous 5250 Report from Petitioner's medical records" and to "file a notice of Errata with the CA DOJ pertaining to this erroneous 5250 Report, requesting that it be withdrawn and disregarded as it was filed in error." (*Id.*, p. 5.)

Standard

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal. App. 4th 1110, 1119.)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or summary adjudication "has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc. § 437c(p)(2).) "Once the defendant . . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc. § 437c(p)(2).)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467; Code Civ. Proc. §437c(c).) The moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

Request for Judicial Notice

MGH's request for judicial notice of the Petition for Writ of Mandate filed on December 23, 2023 (Exhibit 1), MGH's Answer to the Petition for Writ of Mandate (Exhibit 2), the Amended Petition for Writ of Mandate filed on November 21, 2024 (Exhibit 3), MGH's Answer to the Amended Petition for Writ of Mandate (Exhibit 4), Petitioner's Opening Brief (Exhibit 6), Petitioner's Memorandum of Points and Authorities in Support of Motion to Seal (Exhibit 7), the California DOJ's "Information Bulletin" (Exhibit 8), and the Court's Order dated November 8, 2024 (Exhibit 9) are granted. (Evid. Code §§ 452, 453.) However, "[t]aking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning. While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein. When judicial notice is taken of a document, . . . the truthfulness and proper interpretation of the document are disputable." (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 [citations and internal quotations omitted].)

Petitioner's request for judicial notice of Exhibit 1 to his Opening Brief is denied, as the email is not authenticated and not a proper subject for judicial notice. The request for judicial notice of Exhibits 2-4 attached to his Opening Brief, and Exhibit 9 to the Reply Brief, is also denied. Briefs and declarations filed by the Attorney General's office in other cases involving other parties, purportedly to show the DOJ's official interpretation or effect of the law, or to establish the law itself, are not relevant or admissible for this purpose. Petitioner's request for judicial notice of his Reply Brief filed on September 16, 2024, Exhibits 7 and 8 attached to the Reply Brief (copies of the *Pervez* and *Carnohan* cases), and Exhibit 6 to the Opening Brief (copy of an order in the *Sempervirens* case), is granted. The request for judicial notice of Exhibit 5 to the Opening Brief (declaration filed by parties in another case) and Exhibit 9 to the Reply Brief (declaration from an assistant general counsel of the FBI filed by the US Attorney's office in another case) is denied.

Evidentiary Objections

MGH's Objection Nos. 1 (hearsay), 2 (foundation), 3 (foundation), 4 (foundation), 6 (foundation), 7 (foundation), 8 (foundation) and 9 (foundation) are granted. Objection No. 5 is overruled. The Court does not rule on Objection Nos. 10 or 11 as the Court has declined to take judicial notice of the exhibits to Petitioner's briefs, as noted above.

Evidentiary Record

The following facts are undisputed. On December 5, 2015, Petitioner was involuntarily detained pursuant to California Welfare and Institutions Code Section 5150 at the Crisis Stabilization Unit ("CSU") of the Sonoma County Department of Health Services, Behavioral Health Services Division ("SCDHS"). (Undisputed Material Fact ("UMF") 1.) On December 8, 2015, Petitioner was certified by personnel at the CSU at SCDHS for an additional 14 days of intensive treatment pursuant to Welfare and Institutions Code Section 5250. (UMF 2.) On December 8, 2015, SCDHS conducted a certification review hearing with respect to Petitioner's certification under Section 5250. (UMF 3.) After Petitioner was certified for an additional 14 days of intensive treatment pursuant to Section 5250 on December 8, 2015, he was transferred to MGH to receive the treatment for which he had been certified. (UMF 4.) From December 9, 2015 to December 11, 2015, Petitioner was a patient in Unit A at MGH, which is the behavioral health unit at that facility. (UMF 6.) The involuntary "hold" under Section 5250 was terminated on December 11, 2015 and Petitioner left MGH that day. (UMF 7.) Due to a typographical error, the Report of Firearm Prohibition ("Report") submitted by MGH to the DOJ on December 9, 2015 referred to Section 5260 rather than Section 5250. (UMF 9.) On or about February 28, 2024, a corrected version of the Report, in which the reference to 5260 was changed to correctly refer to 5250, was prepared and submitted by MGH to the DOJ and was also added to Petitioner's MGH medical record. (UMF 10, 11.)

Petitioner states that he disputes Fact No. 5 but does not submit any evidence to show it is disputed. Fact No. 5 states that Petitioner arrived at MGH on December 9, 2015 and was admitted to receive the 14 days of intensive treatment. This fact is established by MGH's evidence and, in fact, is consistent with Petitioner's own fact Nos. 4 and 5. Petitioner states that he disputes MGH's Fact No. 8, which states that on December 9, 2015, MGH submitted the Report to the California DOJ, which identifies Petitioner and states: "Date of Admission or

Certification 12/09/2015" and "Welfare and Institutions Code (WIC) 5260 WIC Additional 14 day hold certified DTSO." The evidence submitted by MGH adequately establishes this fact.

Petitioner establishes the following additional facts.[1] After Petitioner's certification review hearing on December 8, 2015, Petitioner filled out a judicial council form for habeas corpus-LPT Act and gave it to CSU staff the same day. (Additional Undisputed Material Fact ("AUMF") 2.) Shortly before midnight on December 8, 2015, Petitioner was transported to MGH, arriving sometime after midnight on December 9, 2015. He was admitted to MGH after midnight. (AUMF 4, 5.) MGH did not notify Petitioner that it had filed a Section 8103 based on his prior Section 5250 hold at the CSU on December 8, 2015. (AUMF 10.)

Discussion

MGH moves for summary judgment on the ground that it did not violate any law or breach any ministerial duty when it submitted the Report to the DOJ and, additionally, there is no authority requiring it withdraw the Report or submit a notice of errata.

As a preliminary note, the revised Report submitted by MGH to the DOJ does not incorrectly state any information. Like the original Report, the revised Report states: "Date of Admission or Certification 12/09/15", which is not inaccurate as it is undisputed that the date of admission to MGH was December 9th (while the date of certification was December 8th). The Report identifies MGH as the "reporting agency/facility", which is also accurate. The Report does not identify MGH as the certifying agency/facility. The certifying agency/facility was SCDHS.

In order to prevail on his action for writ of mandamus, Petitioner must show a ministerial duty on the part of MGH. As the court explained in *Siskiyou Hospital, Inc. v. County of Siskiyou* (2025) 109 Cal.App.5th 14:

> "Code of Civil Procedure section 1085, providing for [traditional] writs of mandate, is available to compel public agencies to perform acts required by law. [Citation.] To obtain relief, a petitioner must demonstrate (1) no 'plain, speedy, and adequate' alternative remedy exists [citation]; (2) 'a clear, present, . . . ministerial duty on the part of the respondent'; and (3) a correlative 'clear, present, and beneficial right in the petitioner to the performance of that duty.'" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339-340, 106 Cal.Rptr.3d 239, 226 P.3d 348 (*Picklesimer*); see Code Civ. Proc., § 1085, subd. (a) [a traditional writ of mandate may be issued "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station"]; *California Assn. of Professional Scientists v. Department of Finance* (2011) 195 Cal.App.4th 1228, 1236, 125 Cal.Rptr.3d 328

[1] Some of Petitioner's "facts" in his separate statement (e.g., Nos. 1, 3 and 15) are not supported by the references to his declaration or any other evidence. Others (e.g., Nos. 6-9, 11-14) rely on statements that the Court does not consider due to evidentiary objections. The Court also does not consider any "facts" in Petitioner's brief that are not included in the Separate Statement and supported by evidence.

> (*Professional Scientists*) [to obtain writ relief, the petitioner must establish the existence of a public officer's or a public entity's "clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty"].)
>
> A ministerial duty is an act that a public agency or officer is required to perform in a prescribed manner in obedience to the mandate of legal authority without regard to any personal judgment concerning the propriety of the act. (*Picklesimer,* supra, 48 Cal.4th at p. 340, 106 Cal.Rptr.3d 239, 226 P.3d 348; *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916, 129 Cal.Rptr.2d 811, 62 P.3d 54.) "'In order to construe a statute as imposing a mandatory duty, the mandatory nature of the duty must be phrased in explicit and forceful language.'" (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 914, 258 Cal.Rptr.3d 830; see *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186, 239 Cal.Rptr.3d 750 [a duty is ministerial when the action is "'unqualifiedly required'"]; *Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1267, 4 Cal.Rptr.3d 536 [" '[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion' "].) "'It is not enough that some statute contains mandatory language. In order to recover plaintiffs have to show that there is some *specific* statutory mandate that was violated by the [public entity] ....' [Citation.] Thus, 'the enactment at issue [must] be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken.' [Citation.] In addition, the enactment allegedly creating the mandatory duty must impose a duty on the specific public entity sought to be held liable." (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689, 64 Cal.Rptr.3d 827; see *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780, 151 Cal.Rptr.3d 420 ["'Even if mandatory language appears in the statute creating a duty, the duty is discretionary if the [entity] must exercise significant discretion to perform the duty.'"].)

(*Id.* at pp. 36-37.) If no source of legal authority imposes a duty on the respondent to act, a petition for writ of mandate is not available. (See *Loder v. Municipal Court* (1976) 17 Cal.3d 859, 863 [plaintiff was not entitled to writ of mandate where no law compelled police agencies to comply with his demand for erasure or return of all records pertaining to his arrest]; *Armando D. v. State Dept. of Health Services* (2004) 124 Cal.App.4th 13, 22-24 [mandate was improper because no state or federal law required DHS to apply certain provisions in operating its electronic enrollment system].)

Summary judgment for the respondent is proper when a petitioner fails to show the respondent had a ministerial duty. (See e.g., *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 180; *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 782-783.)

Based on the relief he seeks, i.e., a writ directing MGH to remove the Report from his medical records and file a notice of errata with the DOJ, the ministerial duty Petitioner appears to allege was owed by MGH was to not submit the Report to the DOJ. Petitioner cites or describes no other ministerial duty owed by MGH that would support his requested relief.

Both parties cite to Welfare & Institutions Code Section 8103(g), which provides in part:

> (1) (A) A person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, a firearm, other deadly weapon, or ammunition for a period of five years . . .
>
> (2) (A) For each person certified for intensive treatment under paragraph (1), the facility shall, within 24 hours of the certification, submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. A report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).
>
> (B) Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice . . . .
>
> (3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).
>
> (4) A person who is subject to paragraph (1) may petition the superior court of the county of their residence for an order that they may own, possess, control, receive, or purchase a firearm, other deadly weapon, or ammunition . . . .

The term "facility" in subsection (2)(A) is not defined.

Section 8103 does not impose a ministerial duty on MGH to not submit the Report. Section 8103 does not require the reporting facility to be the certifying facility or prohibit a facility other than the certifying facility to submit a report. There is no mandatory, obligatory language to this effect. Rather, the statute merely refers to the filing of a report by "the facility"

regarding an individual who has been certified. MGH submitted the Report after Petitioner was certified at SCDHS. Further, as MGH argues, a treating facility such as MGH could potentially be at risk of being held liable for not submitting a report regarding a patient who had been certified. If the Legislature intended that only a certifying facility could submit a report to the DOJ, it could have made this clear in the statute, but it did not do so. Petitioner does not identify any other statute or ordinance which imposes a ministerial duty on MGH to not submit, or refrain from submitting, a report to the DOJ.

Similarly, Petitioner does not identify a statute or ordinance which imposes a ministerial duty on MGH to remove the Report from Petitioner's medical records or to file an errata with the DOJ. Petitioner argues that he is entitled to this relief because he had asked for a judicial review hearing from SCDHS and did not get one. Even if this is true, and even if MGH knew this at the time Petitioner was admitted to MGH (which is not supported by any admissible evidence), Petitioner's request for a judicial hearing does not change the fact that Petitioner had been certified. Under Welfare & Institutions Code § 5275, a person detained under Section 5250 "shall have the right to a hearing by writ of habeas corpus for their release after they or any person acting on their behalf has made a request for their release . . . ." If the court rules in the individual's favor, the result is that the individual is released. (Welf. & Inst. Code § 5276.) Nothing in the statute provides that upon the individual's release, the certification becomes void. The fact that the individual was certified remains unchanged. Further, a report under Section 8103 must be submitted within 24 hours after the individual is certified. (Welf. & Inst. Code § 8103(g)(2)(A) ["For each person certified for intensive treatment under paragraph (1), the facility shall, within 24 hours of the certification, submit a report to the Department of Justice . . . ."].) This requirement would be ineffective if a facility was required to wait to see how an individual proceeded, if at all, with a petition for habeas corpus. Accordingly, the submission of a report to the DOJ stating that an individual was certified does not become improper or wrongful merely because the individual sought to file a petition for writ of habeas corpus.

To the extent Petitioner seeks an order finding that his 5-year ban under California law no longer applies, he has an adequate remedy at law. "'[A] writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance.' [Citation.]" (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584.) Petitioner does not show he has attempted to obtain relief under Section 8103(f) or (g) which provide a process for an individual to request a court order allowing him to own firearms. Petitioner could also seek declaratory relief as to whether the 5-year ban has expired.[2] To the extent Petitioner seeks to have a federal agency or authority lift any applicable federal ban based on his allegation he was not given judicial review similar to the plaintiffs in the *Stokes* and *Clifton* cases he cites, this writ proceeding against MGH is not the proper vehicle to obtain that relief. (See *Stokes v. United States*, 551 F.Supp.3d 993 (N.D. Cal. 2021) [action brought against U.S. Department of Justice, FBI, and California Attorney General]; *Clifton v. United States*, 615 F.Supp.3d 1185 (E.D. Cal. 2022) [action brought against U.S. Department of Justice, ATF and FBI].)

Petitioner's request for a continuance to conduct discovery in its opposition, or in his separate motion to re-open discovery is denied. Petitioner does not reference Code of Civil

[2] Petitioner's earlier request for an order compelling MGH to correct the reference to Section 5260 in the original Report is moot as it is undisputed that MGH has already done so.

Procedure Section 437c(h) or its requirements, which include the requirement that Petitioner submit an affidavit showing "that facts essential to justify opposition may exist but cannot, for reasons stated, be presented . . ." Petitioner submits no such affidavit here. (See *American Continental Ins. Co. v. C& Z Timber Co.* (1987) 195 Cal.App.3d 1271, 1280 ["The code section specifically requires a good faith showing by affidavit. It is not enough to merely raise the issue in the opposition memorandum"].) Petitioner argues at the end of his brief that he needs to discover the "proverbial who, what, when, where & why of Petitioner's mysterious circumstances in his arrival at MGH in the middle of the night, the lack of any procedural due process being observed with in regard to Petitioner's paperwork & MGH's secretive filing of the contested certification report with the DOJ." Even if Petitioner had submitted the requisite affidavit, Petitioner provides no explanation as to why he did not seek this discovery earlier. Further, Petitioner does not explain how the discovery he seeks would affect the Court's ruling, which is based on an interpretation of the relevant statutory framework and not any potentially disputed factual or evidentiary issues.

Accordingly, the motion for summary judgment is granted and the motion to re-open discovery is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002419

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: BRUCE FRANKEL vs. DEFENDANT: CENTRAL MARIN POLICE AUTHORITY, ET AL	

NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR PROGRAM

RULING

On March 26, 2025, Plaintiff Bruce Frankel filed a Pitchess motion pursuant to Evidence Code section 1043.

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002789

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: PETER ALEXANDER	
vs.	
DEFENDANT: CAMERON ZAND	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant Cameron Zand's ("Defendant") Motion for Summary Judgment or, in the alternative, Summary Adjudication is DENIED.

BACKGROUND

Plaintiff Peter Alexander ("Plaintiff") is a licensed general contractor. In August 2023, he was hired by Defendant to perform foundation work at a residential property in Sausalito. On January 24, 2024, Plaintiff and Defendant met at the property and descended exterior wooden stairs to access the floor where the foundation work was occurring. About halfway down, Plaintiff alleges he slipped on a wet step and fell hard, sustaining serious injuries to his shoulder, hip, and back. Plaintiff initiated this lawsuit on May 5, 2024.

LEGAL STANDARD

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the party does so, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant ... has met that burden, the burden shifts to the plaintiff... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Med. Ctr.* (2008) 159 Cal.App.4th 463, 467.)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection),

as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Ibid.*; see also Code Civ. Proc., § 437c, subd. (c).)

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims of damages, or one or more issues of duty. (Code Civ. Proc., § 437c(f).) A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion. (*Lomes v. Hartford Financial Service Group, Inc.* (2001) 88 Cal.App.4th 127, 131.)

DISCUSSION

Defendant brings this Motion on the grounds that both the First Cause of Action for Negligence and Second Cause of Action for "Unsafe Condition of Private Property" fail as a matter of law because, under *Privette v. Superior Court* (1993) 5 Cal.4th 689 and subsequent interpreting cases, Defendant delegated all responsibility for workplace safety to Plaintiff. Accordingly, Defendant argues he had no legal duty towards Plaintiff.

Under *Privette* and its progeny, there is a strong presumption under California law that a hirer of an independent contractor delegates to the contractor all responsibility for workplace safety. (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 37, internal citations omitted.) This means that a hirer is typically not liable for injuries sustained by an independent contractor or its workers while on the job. (*Id.* at pp. 37-38.) Commonly referred to as the *Privette* doctrine, the presumption originally stemmed from the following rationales: First, hirers usually have no right to control an independent contractor's work. (*Id.*) Second, contractors can factor in "the cost of safety precautions and insurance coverage in the contract price." (*Id.*) Third, contractors are able to obtain workers' compensation to cover any on-the-job injuries. (*Id.*) Finally, contractors are typically hired for their expertise, which enables them to perform the contracted-for work safely and successfully. (*Id.*)

Two limited circumstances have been identified in which the presumption is overcome. (*Id.*) First, a hirer may be liable when it retains control over any part of the independent contractor's work and negligently exercises that retained control in a manner that affirmatively contributes to the worker's injury. (*Id.* citing *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198.) Second, a landowner who hires an independent contractor may be liable if the landowner knew, or should have known, of a concealed hazard on the property that the contractor did not know of and could not have reasonably discovered, and the landowner failed to warn the contractor of the hazard. (*Id.* citing *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659.)

In this case, disputed material facts exist with regards to whether the stairwell was part of the worksite and within the scope of Plaintiff's work, whether Defendant retained control of access routes or the worksite generally, whether Plaintiff's injury arose out of a peculiar risk inherent in the work, and whether the *Kinsman* exception applies. (See Plaintiff's Responses to Defendant's Undisputed Material Facts ("Resp. to UMF") Nos. 3, 9, 10, 12, 15, 17, 20, 24, 33-38; Plaintiffs Additional Material Facts ("AMF") Nos. 39-49; and Defendant's Responses to AMF ("Resp. to AMF") Nos. 39, 41-42, 45-47.)

Based on the foregoing, the Court DENIES Defendant's Motion for Summary Judgment or, in the alternative, Summary Adjudication.

To the extent objections to evidence were made solely in the separate statement in violation of California Rules of Court Rule 3.1354 (which requires evidentiary objections to be separately served and filed and "must not be restated or reargued in the separate statement") the Court declines to consider or rule on those improper objections. (See *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 9 [upholding the trial court's refusal to rule on objections contained solely in the separate statement].)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for June, 2025 is as follows:
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Meeting ID: 161 548 7764
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If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003265

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: DEBORAH ALLYCE MILLER ET AL vs. DEFENDANT: VOLKSWAGEN GROUP OF AMERICA, INC., A NEW JERSEY CORPORATION	

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

On March 28, 2025, Plaintiffs filed a motion to compel further responses to Plaintiffs' request for Production of Documents.

Defendant asserts that after it received a meet and confer letter, it served supplemental responses on February 7, 2025 and again on March 20,2025, as well as supplemental documents on June 11, 2025.

On May 14, 2025, Mark Burton was appointed as Discovery Facilitator for the motion. It is unclear whether the parties reached further agreement with the Discovery Facilitator. Neither party filed Declaration of Non-Resolution as required in local rule MCR Civ 2.13H. The court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

In light of the absence of the Declaration of Non-Resolution, as well as the meet and confer efforts detailed in the Declaration of Laura Pratt, the court is unclear which items remain at issue, and whether the parties are resolving this matter with the Discovery Facilitator. The court shall drop the matter off calendar. If efforts with the Discovery Facilitator are unsuccessful, after filing a Declaration of Non-Resolution, either party may move *ex parte* for the court to place the motion on calendar on shortened time.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003286

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: BUZULAGU AIZEZI vs. DEFENDANT: RYAN LEPENE ET AL	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

The motion to set aside default and default judgment pursuant to Code of Civil Procedure section 473.5 by defendants David Hidalgo-Foster and Preeminent California I-III, LLC (collectively "the Foster Defendants") is GRANTED.

LEGAL STANDARD

Code of Civil Procedure section 473.5 provides:

> (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
>
> (b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a

copy of the answer, motion, or other pleading proposed to be filed in the action.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

DISCUSSION

On June 28, 2024, plaintiff Buzulagu Aizezi ("Plaintiff") filed the complaint at issue in this action against the Foster Defendants. On September 10, 2024, Plaintiff filed a proof of service attesting to personal service of the summons and complaint on the Foster Defendants on August 27, 2024 by a registered process server. Request for entry of default was filed by Plaintiff on January 3, 2025, and on January 30, 2025, default judgment was entered against the Foster Defendants.

The Foster Defendants filed this Motion to Set Aside Default and Default Judgment on March 24, 2025 on the ground that service of summons did not result in actual notice (Code Civ. Proc., § 473.5.) They argue that they were never served with the complaint and were unaware of the lawsuit and the default judgment until March 3, 2025. They claim that they were out of the country from March 25, 2024, to December 24, 2024, due to a family member's death, which led to administrative difficulties and disconnection from the proceedings.

The Foster Defendants assert that they acted with reasonable diligence by filing the motion to set aside the default judgment shortly after receiving actual notice of the lawsuit. They argue that they have a meritorious defense and have attached a copy of their answer to the complaint as required by Code of Civil Procedure section 473.5.

In opposition, Plaintiff argues the Foster Defendants were properly served and had actual notice of the complaint and default judgment. In particular, Plaintiff points to the proof of personal service on defendant David Hidalgo-Foster on August 27, 2024 to counter the assertion that the Foster Defendants lacked actual knowledge of the lawsuit to timely respond to the complaint.[1] Plaintiff further argues that additional notices were sent via email and US mail to Hidalgo-Foster's known addresses.

The granting or denying of a motion to set aside default and default judgment is in the sound discretion of the Court. (See *Romer, O'Connor & Co. v Huffman* (1959) 171 Cal.App.2d 342, 347.) "[A]nd generally, since the code section allowing such a motion, Code of Civil Procedure, section 473, is a remedial measure and to be liberally construed (*Waybright v. Anderson*, 200 Cal. 374, 377, 253 P. 148; *In re Estate of Strobeck*, 111 Cal.App.2d 853, 858, 245

[1] There is a rebuttable presumption of proper service when there is proof of service by a registered process server. (Evid. Code, §647; see also *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390 [statutory presumption required defendant to produce evidence he was not served].)

P.2d 317), any doubts existing as to the propriety of the trial court's action will be resolved in favor of a hearing on the merits. *Beckley v. Reclamation Board*, 48 Cal.2d 710, 718, 312 p.2d 1098; *Benjamin v. Dalmo Mfg. Co.*, 31 Cal.2d 523, 525–526, 190 P.2d 593; *Nomellini Construction Co. v. Deane*, 160 Cal.App.2d 57, 59, 324 P.2d 654; *Yarbrough v. Yarbrough*, 144 Cal.App.2d 610, 614, 301 P.2d 426." (*Ibid.*)

While proofs of personal service were filed showing that defendant Hidalgo-Foster and his entities were served on August 27, 2024 and that the service was completed by a registered process server who attests to personally handing the complaint to Hidalgo-Foster at his home at 9:30 p.m., Mr. Hidalgo-Foster's declaration sets forth that he was out of the country during the alleged time of personal service. (See Hidalgo-Foster Decl., ¶ 3.) Plaintiff has failed to provide an additional declaration from the registered process server or any additional evidence to confirm actual notice and contravene this sworn testimony.

In addition to the evidence that the Foster Defendants lacked actual notice of this action, the motion to set aside is timely and they provide their answer which includes affirmative defenses to the causes of action alleged against them. The Foster Defendants have met the statutory requirements for relief under Code of Civil Procedure section 473.5.

Accordingly, the Court grants the motion. The proposed answer attached to the declaration of attorney Terence Orme shall be filed by the Foster Defendants within five court days of this Court's final order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003795

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: OPTIMAL PARTNERS, A CALIFORNIA GENERAL PARTNERSHIP and DEFENDANT: BRIAN MITCHELL, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) MOTION – STRIKE

RULING

Defendant Brian Mitchell's demurrer to the First Amended Complaint is sustained in its entirety with 30 days leave to amend. (Code Civ. Proc., § 430.10(e).) The motion to strike is moot.

Request for Judicial Notice

Mitchell's request for judicial notice in connection with both the demurrer and motion to strike is granted. (See Evid. Code, § 452, subd. (d).)

Allegations

Plaintiff Optimal Partners ("Optimal") alleges that in August 2023 it was the highest bidder at a foreclosure sale of 2 Lakeview Court in Novato (the "Property"), commenced by Defendant Mortgage Lender Services, Inc. dba Sunrise Assessment Services ("Sunrise") against the previous owner of the Property. Optimal bid and tendered $50,000. Optimal further alleges that Mitchell thereafter submitted a bid of $80,108, falsely representing himself to be a prospective owner-occupant under Civil Code section 2924m when, in fact, he was not an eligible bidder under that section as he did not intend to reside, and still does not reside, at the Property.

On August 28, 2024, Optimal filed its Complaint against Mitchell, Sunrise, and all persons claiming an interest in the Property asserting causes of action for intentional interference with prospective economic advantage against Mitchell, negligent interference with prospective economic relations against Mitchell, violation of Civil Code Sections 2924g, 2924h and/or

2924m against all defendants, cancellation of instruments against all defendants, declaratory relief against all defendants, and quiet title.

On November 18, 2024, Optimal filed a Notice of Recorded Lis Pendens indicating that a lis pendens was recorded against the Property on September 4, 2024.

On February 5, 2025, this Court sustained Mitchell's demurrer to all five causes of action asserted by Optimal with leave to amend and granted his motion to expunge the lis pendens.

On March 24, 2025, Optimal filed its operative First Amended Complaint now alleging a single cause of action for violation of Business and Professions Code section 17200 against Mitchell only.

Demurrer

Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.)

Merits

Business & Professions Code §17200 prohibits any business act or practice that is unlawful, unfair, or fraudulent. A cause of action for violating this statute "borrows" actionable conduct and makes it independently actionable under the unfair competition law. (*Smith v. State Farm* (2001) 93 Cal.App.4th 700, 718.) Under Proposition 64 (codified in Business & Professions Code §§ 17204, 17535), individuals do not have standing unless they have suffered an injury in fact and has lost money or property as a result of such unfair competition. In *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322, the Court stated that a party "must (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e.,

economic injury, and (2) show that the economic injury was the result of, i.e., caused by the unfair business practice or false advertising that is the gravamen of the claim."

Here, Mitchell argues Optimal has not alleged any injury in fact. Optimal alleges it "has been damaged in an amount according to proof in that Plaintiff has been deprived of title to the Subject Property, deprived of the rental value and equity therein, and otherwise." (FAC, ¶ 18.) Optimal cannot demonstrate a direct loss of money or property as a result of the Mitchell's' alleged unfair acts. Optimal never owned nor had any legal or equitable interest in the Property when the alleged unfair acts took place therefore it could not have suffered an injury-in-fact based on the loss of potential ownership of the Property. Based on the foregoing, the Court sustains the demurrer.

Moreover, Optimal's claim hinges on whether it has standing to bring a claim for violation of Civil Code section 2924m. Plaintiffs' claim under hinges on whether they have standing to bring an unfair competition claim based on the alleged violation. Civil Code section 2924m(j) provides: "The Attorney General, a county counsel, a city attorney, or a district attorney may bring an action for specific performance or any other remedy at equity or at law to enforce this section." Thus, based on the statute's plain language, the Legislature did not intend to create a private right of action for violations of this section, as the statute provides a comprehensive enforcement mechanism.

Considering the above, the general demurrer is SUSTAINED with one last opportunity to amend.

Motion to Strike

Given the Court's ruling sustaining the demurrer, the motion to strike is moot.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004420

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ADAM BLOCK, AN INDIVIDUAL AND AS TRUSTEE OF THE BLOCK FAMILY TRUST AND BLOCK & ASSOCIATES, LLC vs. DEFENDANT: FARMSHOP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) MOTION – QUASH

RULING

Presently before the court is the demurrer of cross-defendants Adam Block and Block & Associates (collectively "Block") to the seventh and tenth causes of action, and the motion to quash of cross-defendants Vesuvio Bakery Farley PO, LLC, Vesuvio Bakery Tenth Avenue, LLC, and Vesuvio In NYC, LLC (collectively "Vesuvio LLCs"). The unopposed requests for judicial notice submitted in connection with both motions are granted.

Demurrer

The demurrer is sustained with leave to amend as to the seventh and tenth cause of action.

Tenth Cause of Action – Indemnification

As to the tenth cause of action, Block raises several arguments as to why the cause of action fails to state facts sufficient to constitute a cause of action as to the contract claims. The court agrees with one argument and rejects the other two arguments.

1) Indemnity Provision Does Not Apply: Block correctly argues that the indemnity provision does not apply to the possible issue regarding Andreina Espinosa or the class action labor lawsuit. Although Cross-Complainants selectively quote from the indemnity provision, when read in context, the indemnity provision is not ambiguous and does not apply. Although Cross-Complainants did not attach a copy of the agreement to their cross-complaint, they alleged the agreement exists and refer to it repeatedly in the second amended complaint, including quoting a section of it. Further, in their opposition to the demurrer to the seventh cause of action, they point to a paragraph in the agreement and cite exhibit A to the complaint. Where the pleading references documents, judicial notice is appropriate. (See *Ingram* v. *Flippo* (1999) 74 Cal.App.4th 1280, 1285, fn. 3 [documents quoted in but not attached to complaint properly

judicially noticed]; *Salvaty* v. *Falcon Cable Television* (1985) 165 Cal.App.3d 798, 800, fn. 1 [agreement referred to throughout complaint and alleged to exist properly judicially noticed].) Therefore, the court takes judicial notice of the agreement.

Paragraph 15 of the agreement includes terms only applicable to Block and any "employees, subcontractors, partners or agents" employed or engaged by Block ("the 'Assistants'"). The "such taxes, labor or employment requirements" for which Block is required to indemnify Farmshop pursuant to subparagraph c. clearly refers back to the taxes, labor and employment requirements for Block and the Assistants.

Cross-Complainants argue that they have stated an alternative cause of action for implied contractual indemnity. The court disagrees but will grant Cross-Complainants leave to amend. In *Sehulster Tunnels/Pre-Con* v. *Traylor Brothers, Inc./Obayashi Corp.* (2003) 111 Cal.App.4th 1328, 1350-1351, the court discussed implied contractual indemnity as follows:

> Implied contractual indemnity is a form of equitable indemnity, arising from equitable considerations either by contractual language not specifically dealing with indemnification or by the equities of the specific matter. "The right to implied contractual indemnity is predicated on the indemnitor's breach of contract..." ... "Implied contractual indemnity is applied to contract parties and is designed to apportion loss among contract parties based on the concept that one who enters a contract agrees to perform the work carefully and to discharge foreseeable damages resulting from that breach." As a form of equitable indemnity, the doctrine rests on the equities apparent from the surrounding circumstances, because contracting parties should share loss in proportion to their breach. An implied contractual indemnity action does not amount to a claim for contribution from a joint tortfeasor because it is founded neither in tort nor on any duty that the indemnitor owes to the injured party. Rather, it is predicated on the indemnitor's breach of a duty owing to the indemnitee to properly perform its contractual responsibilities.

The basis of this cause of action is that Block "fail[ed] to set up robust human resources procedure..." In the general allegations Cross-Complainants allege:

> 37. Block was tasked with creating a functional human resources department but failed to implement key policies, procedures, and structures, such as a regularly updated employee handbook. This lack of organization led to inefficiencies in employee management and processing.
>
> 38. Block did not establish effective employee support systems, such as performance management, training, or career development programs. This failure left employees without clear growth pathways, contributing to turnover, and obscured the channels for resolving workplace issues.

Cross-Complainants need to make clear how Block's failure to properly perform these tasks led to the claims at issue.

2) Doctrine of Exclusive Concurrent Jurisdiction: The court finds that this doctrine does not apply here.

In *Shaw* v. *Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 255-257, the court discussed the doctrine as follows:

> ... Under this doctrine, when two or more courts have subject matter jurisdiction over a dispute, the court that first asserts jurisdiction assumes it to the exclusion of others. The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy and preventing vexatious litigation and multiplicity of suits. The rule is "a judicial rule of priority or preference and is not jurisdictional in the traditional sense of the word," in that it "does not divest a court, which otherwise has jurisdiction of an action, of jurisdiction." Because it is a policy rule, application of the rule depends upon the balancing of countervailing policies.
>
> "'Although the rule of exclusive concurrent jurisdiction is similar in effect to the statutory plea in abatement, it has been interpreted and applied more expansively, and therefore may apply where the narrow grounds required for a statutory plea in abatement do not exist. Unlike the statutory plea in abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions. If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings.'"
>
> It has been said that "'an order of abatement issues as a matter of right'" where the conditions for its issuance exist, whether the right to abate exists under statutory abatement or the judicial rule of exclusive concurrent jurisdiction. Where the exclusive concurrent jurisdiction rule applies, the second action should be stayed. ...

(Citations and brackets omitted.)

The dispute at issue in the *Sierras-Almada* action involves whether Farmshop Marin failed to pay certain wages, provide meal and rest period, reimburse expenses, etc. The dispute at issue here is whether Block is required to indemnify Farmshop Marin in the event it is found liable in that action. There is no possibility of contradictory decisions or awards relating to the same controversy. *Plant Insulation Co.* v. *Fireboard Corp.* (1990) 224 Cal.App.3d 781, relied upon by Block, is distinguishable. In that case, both appellant and respondent were named defendants in numerous pending actions filed by plaintiffs alleging personal injuries and wrongful death. The court explained:

> In the instant case appellant's complaint refers to the asbestos suits in which it and respondent are codefendants, and alleges its liability in those actions is based on its status as a distributor of respondent's products. The determination of its liability relative to respondent is an issue in those actions, in any good faith settlement determination in those actions, and in the indemnity claims in the instant action. Thus, we conclude the relative liability of the parties to the asbestos claimants arises out of the same transaction, and the subject matter is the same for purposes of application of the rule of exclusive concurrent jurisdiction.

(*Id.* at 789.) Here, Block has no potential liability towards Sierras-Amada or the class. Whether Block is liable to Farmshop Marin is not an issue in that action.

3) Espinosa Allegations Premature and Speculative: Because the court has rejected the argument regarding the application of the exclusive concurrent jurisdiction doctrine to the extent the cause of action is based upon the *Sierras-Almada* action, the argument regarding the Espinosa allegations would not dispose of the entire cause of action. A general demurrer does not lie to part of a cause of action. (See *Daniels* v. *Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167, *Fire Ins. Exchange* v. *Superior Court* (2004) 116 Cal.App.4th 446, 452, and *PH II, Inc.* v. *Superior Court* (1995) 33 Cal.App.4th 1680, 1682.)

Seventh Cause of Action – Breach of Contract

"... 'A cause of action for breach of contract requires proof of the following elements: (1) existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach.' ..." (*Miles* v. *Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402.) "It is well settled a pleader must state with certainty the facts constituting a breach of contract. ..." (*Melican* v. *Regents of University of California* (2007) 151 Cal.App.4th 168, 174.) "Facts alleging a breach, like all essential elements of a breach of contract cause of action, must be pleaded with specificity. (See generally 4 Witkin, Cal. Procedure (4th ed. 1996) Pleading, § 4495, pp. 585-586; *Bentley v. Mountain* (1942) 51 Cal.App.2d 95, 98... [general averments that defendants violated the contract insufficient; pleader must allege facts demonstrating breach]; *Thompson v. Purdy* (1931) 117 Cal.App. 565, 567... [general averments that defendant failed to perform duties or comply with contract insufficient].) ..." (*Levy* v. *State Farm Mutual Automobile Ins. Co.* (2007) 150 Cal.App.4th 1, 5-6.) While Cross-Complainants point to numerous actions taken by Block, they have not specified which of those constitute "services" which were not "agreed to as between Block and Cerciello."

As an example of how Cross-Complainants have not stated with specificity the "conduct" that constitutes a breach of the relevant provision, paragraph 28 alleges:

> In December of 2023 Block informed Cerciello that the FARMSHOP ENTITIES would incur a large tax liability unless a distribution was made to Cerciello and Block. Cerciello did not want to make a distribution and preferred to direct the resources towards retiring debt. However, based on Block's advice, Cerciello agreed to have checks issued from the

> FARMSHOP ENTITIES to Block and Associates. Specifically, $118,750 was taken from FARMSHOP SANTA MONICA, $118,750 was taken from FARMSHOP MARIN, and $118,750 was taken from FARMSHOP COMMISSARY, with all $356,250 being deposited to Block and Associates. Subsequently, Gary Needleman, an accountant hired by Block, informed the FARMSHOP ENTITIES' Controller that the payments to Block needed to be reclassified from "distributions" to consulting fees because Block was not a partner and could not receive distributions.

To the extent advising Cerciello that the Farmshop businesses needed to make distributions was a service Block was to perform, Cerciello clearly agreed to his performance of that service since he agreed to the distributions. As another example, paragraph 36 alleges:

> Block failed to properly set up General Ledger codes and labor distributions across the FARMSHOP ENTITIES, leading to inaccurate Profit & Loss statements. These errors resulted in distorted financial records, now requiring external accountants to correct.

These allegations indicate that Block was supposed to set up General Ledger codes and labor distributions (i.e., this service was agreed to). The fact that he did not do it properly does not mean the service was not agreed to (unless Cross-Complainants are claiming that Cerciello had to agree that Block could do it improperly, which is nonsensical).

The same holds true for paragraph 37 and 38, where Cross-Complainants allege:

> 37. Block was tasked with creating a functional human resources department but failed to implement key policies, procedures, and structures, such as a regularly updated employee handbook. This lack of organization led to inefficiencies in employee management and processing.
>
> 38. Block did not establish effective employee support systems, such as performance management, training, or career development programs. This failure left employees without clear growth pathways, contributing to turnover, and obscured the channels for resolving workplace issues.

Again, Block was performing an agreed-upon service but allegedly did not perform that service properly.

In conclusion, the Court agrees with Block that insufficient facts have been pled to show any Services were performed by Block that were not agreed to by Cerciello. Demurrer is sustained with leave to amend.

Motion to Quash Service of Summons

The motion is denied as to Vesuvio Bakery Tenth Avenue ("VBTA") and continued as to the remaining Vesuvio LLCs.[1]

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[1] The court has not considered Cross-Complainants' objections to the declaration of Block as unnecessary to the resolution of this motion. With respect to the declaration of Cross-Complainants' attorney and the exhibits

The Vesuvio cross-defendants bring this motion to quash pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1), alleging lack of jurisdiction of the court over them.

"When a defendant moves to quash service of process, the plaintiff bears the initial burden of demonstrating facts justifying the exercise of jurisdiction. To carry this burden, the plaintiff must do more than merely allege facts; the plaintiff '"must present evidence sufficient to justify a finding that California may properly exercise jurisdiction over the defendant."' If the plaintiff satisfies the initial burden, then the defendant has the burden of demonstrating that the exercise of jurisdiction would be unreasonable." (*ParaFi Digital Opportunities LP* v. *Egorov* (2025) 108 Cal.App.5th 124, 133, citations omitted.) "California courts may exercise personal jurisdiction 'on any basis not inconsistent with' the California or United States Constitutions. Federal constitutional principles require that a nonresident defendant have sufficient '"'minimum contacts'"' with California to justify the exercise of personal jurisdiction. 'The concept of minimum contacts embraces two types of jurisdiction—general and specific.' ..." (*Id.* at 134, citations omitted.)

Cross-complainants contend that the Vesuvio defendants are subject to this court's specific jurisdiction. Generally, three requirements must be satisfied for a California court to exercise specific jurisdiction over a nonresident defendant: (1) the defendant must purposefully avail themselves of forum benefits; (2) the controversy must be related to or arise out of the defendant's forum contacts; and (3) the assertion of personal jurisdiction must comport with fair play and substantial justice." (*Ibid.*, citations and brackets omitted.) "...[C]ourts must assess 'each defendant's contacts with the forum State...individually.' ..." (*Rivelli* v. *Hemm* (2021) 67 Cal.App.5th 380, 395.)

Regarding the first prong requiring purposeful availment, the evidence shows that Farmshop subsidized "the remodel and operation of VBTA, LLC's operations through a combination of cash infusions and discounted product sales." (Block decl. ¶6.) Block states that this was done by him and Cerciello as co-owners of Farmshop, and the Vesuvio LLCs argue in their moving brief that Block was acting solely as CFO/COO of Farmshop and not on behalf of VBTA (which thus took no wrongful action).

The court finds this argument unconvincing. Either Block alone or Block and Cerciello were the only members of VBTA. Absent their relationship. Farmshop would have had no reason to infuse cash or provided discounted products. It is not credible for Block to claim that he (or he and Cerciello) were only acting as agents for Farmshop and not VBTA. VBTA got the benefit from California, based upon Block's presence there (or Block and Cerciello), of subsidization of its remodel and operations. A defendant can purposefully direct its activities at the forum state by causing a separate person or entity to engage in forum contacts. (*Anglo Irish Bank Corp., PLC* v. *Superior Court* (2008) 165 Cal.App.4th 969, 983; see also *DVI, Inc.* v. *Superior Court* (2002) 104 Cal.App.4th 1080 1096 ["acts of corporate agents within the forum may establish jurisdiction over the corporation"] and Weil and Brown, Cal. Practice Guide: Civil Procedure Before Trial (TRG 2024) § 3:207.1.) *Rivelli* v. *Hemm* (2021) 67 Cal.App.5th 380 does not support VBTA's position. In that case, Hemm, the executive vice president of Staumann, was on the board of directors of Rodo. The discussion by the court relief upon by VBTA was

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thereto, an attorney can properly authenticate documents produced by the opposing party in discovery as long as their form indicates authenticity. (*Hooked Media Group, Inc.* v. *Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) Even if an attorney cannot authenticate exhibits produced by his or her own client, the reply declaration of Block authenticates exhibits E-G.

made clear that Hemm's exercise of his duties *as director of Rodo* could not create minimum contacts for personal jurisdiction over Staumann. The court in fact found that the purposeful availment element had been met as to Staumann based upon Hemm's actions on behalf of Staumann. (See *id.* at 396.)

As to the remaining Vesuvio LLCs, the only evidence offered is the June 14, 2024 to June 17, 2024 email chain and the two Restaurant 365 invoices attached as exhibits D, F and G to the Kassis decl.) These documents are not sufficient to establish that those Vesuvio LLCs purposefully availed themselves of forum benefits.

As to the second prong, the Court concludes that the claims are forum-related since the Vesuvio LLCs were acting through Block and the allegedly wrongful conduct took place in California.

Regarding the requirement that personal jurisdiction must comport with fair play and substantial justice, the Vesuvio cross-defendants argue that it would be a significant burden for them to have to defend themselves in California. Given that their only member (or both of their members, if it turns out that Cerciello is in fact a member) live in California, this argument is not compelling. Additionally, this case involves actions taken in California at Farmshop. Therefore, it would seem that most or all of the evidence will be in California.

The Vesuvio cross-defendants additionally point to the arbitration clause in the Revised Operating Agreement of each of them. Those provisions require arbitration of voting deadlocks between the members. (See exs. A-C to Block decl., ¶5.11.) The claims against the Vesuvio LLCs do not involve voting deadlocks between Block and Cerciello as members of the Vesuvio cross-defendants. It involves claims by the Farmshop businesses against the Vesuvio LLCs. Even if did, the appropriate remedy is to move to compel arbitration.

As to the remaining Vesuvio LLCs, Cross-Complainants request that limited jurisdictional discovery directly of Vesuvio in order to investigate Vesuvio accounts and obtain internal Vesuvio records showing which Vesuvio entities received which products from Farmshop. "'A plaintiff attempting to assert jurisdiction over a nonresident defendant is entitled to an opportunity to conduct discovery of the jurisdictional facts necessary to sustain its burden of proof,' and "in order to prevail on a motion for a continuance for jurisdictional discovery, ...should demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction.' ..." (*Hardell* v. *Vanzyl* (2024) 102 Cal.App.5th 960, 974-975, brackets omitted.)

The court finds that Cross-Complainants are entitled to conduct discovery as to Vesuvio Bakery Farley PO and Vesuvio In NYC. Whether or not Block did anything wrong, money and discounted product were admittedly sent to VBTA. In looking at everything before the court, it appears that Block and Cerciello were operating all of the businesses with a lot of overlap. With respect to the argument that bank records would show payments, this ignores the cross-complaint's allegations that funds generally went to Block and then to the Vesuvio LLCs. With respect to product, it is certainly possible that the product went to VBTA and then from there to the other Vesuvio LLCs.

Accordingly, the court will continue the motion to quash as to Vesuvio Bakery Farley PO and Vesuvio in NYC, to September 24, 2025 at 1:30 pm in Department H. Cross-Complainants shall file any further opposition by September 9, 2025. Any reply may be filed on or before September 17, 2025.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/25/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005353

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: HECTOR CUC PALUX vs. DEFENDANT: CHARLES OLENLOTE BUINIMASI, ET AL	

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

Counsel for Plaintiff filed a motion to be relieved as counsel. Plaintiff was served a copy of this notice, and no opposition was filed. The court intends to grant this motion, but shall continue this matter to July 9, 2025 so that counsel can file a declaration confirming he has sent Plaintiff his file in this matter. Upon receipt of the declaration, and assuming there is no opposition, the motion shall be granted.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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